

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, )  
INC., a Delaware )  
corporation, )  
)  
Plaintiff, )  
) C.A. No. 08-309 JJF-LPS  
v. )  
)  
FAIRCHILD SEMICONDUCTOR )  
INTERNATIONAL, INC., a )  
Delaware corporation, )  
FAIRCHILD SEMICONDUCTOR )  
CORPORATION, a Delaware )  
Corporation, and SYSTEM )  
GENERAL CORPORATION, a )  
Taiwanese corporation, )  
)  
Defendant. )

Friday, October 3, 2008  
12:30 p.m.  
Courtroom 2A

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE LEONARD P. STARK  
United States District Court Magistrate

APPEARANCES:

FISH & RICHARDSON  
BY: KYLE WAGNER COMPTON, ESQ.  
BY: FRANK SCHERKENBACH, ESQ.  
BY: HOWARD G. POLLACK, ESQ.  
BY: MICHAEL R. HEADLEY, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2 ASHBY & GEDDES

3 BY: JOHN G. DAY, ESQ.

4 -and-

5 ORRICK, HERRINGTON & SUTCLIFFE, LLP

6 BY: ULYSSES S.T. HUI, ESQ.

7 Counsel for the Defendants  
Fairchild and System General

8 ASHBY & GEDDES

9 BY: STEVEN BALICK, ESQ.

10 -and-

11 FINNEGAN, HENDERSON, FARABOW

12 GARRETT & DUNNER, L.L.P.

13 BY: E. ROBERT YOCES, ESQ.

14 BY: ERIK R. PUKNYS, ESQ.

15 BY: WEIGUO CHEN, ESQ.

16 Counsel for the Defendant BCD

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1 THE COURT: All right. Let's  
2 turn, I assume, briefly to the Fairchild matter  
3 there, which we just have a status conference as  
4 well.

5 And I think my sort of general  
6 question is I'd like to have an understanding as  
7 to how this case fits together with the case in  
8 which you had the trial, and what, if any,  
9 relationship there is, and what the parties  
10 propose I do in terms of handling it. And I'll  
11 hear first from Power.

12 MR. SCHERKENBACH: Okay. Thank  
13 you, Your Honor.

14 I mean, we brought the case  
15 because there are new products, different  
16 products, or at least as marketed and sold by  
17 Fairchild and SG. They have different numbers.  
18 They're being represented to be different  
19 products.

20 Whether, in fact, they turn out to  
21 be able to use different circuitry, we don't  
22 know. But one thing's for sure, we can't count  
23 on them being within the scope of the prior  
24 case, because they're being represented to be

1 different and have different numbers.

2 So, fundamentally, that's why we  
3 brought the case. There is sort of a footnote  
4 to that. Between the time that we finished  
5 discovery essentially in the first case and the  
6 time of the trial, time passed, and we actually  
7 asked Judge Farnan to give us an accounting for  
8 that period. That request is out there.

9 He may grant it. He may deny it.

10 If he denies that, there is a  
11 possibility that we would have to address that  
12 period, even for the old products, in the new  
13 case. So, as a practical matter, that's why we  
14 brought this other case.

15 THE COURT: And we have a fully  
16 briefed motion to dismiss or for --

17 MR. SCHERKENBACH: Correct.

18 THE COURT: I believe Fairchild  
19 filed a motion to stay these proceedings.

20 MR. SCHERKENBACH: Yes.

21 THE COURT: Are you planning to  
22 respond and oppose?

23 MR. SCHERKENBACH: Absolutely. I  
24 assume you don't want to hear from me today on

1       that.

2                       THE COURT:    No.

3                       MR. SCHERKENBACH:   We'll oppose  
4       the motion to stay based on re-exam, as you may  
5       imagine.

6                       THE COURT:    And would your request  
7       be that I, withstanding those motions, go ahead  
8       and have the scheduling conference and set up a  
9       scheduling order and all that?

10                      MR. SCHERKENBACH:   Absolutely.   In  
11       fact, I was sort of hoping today, but I think  
12       that absolutely should happen.   There's no  
13       reason to avoid putting a schedule in place in  
14       the case.

15                      THE COURT:    Okay.   Let me hear  
16       from Mr. Hui.   Is that right?

17                      MR. HUI:    Yes.   Thank you, Your  
18       Honor.

19                      THE COURT:    Okay.

20                      MR. HUI:    The first thing is I  
21       don't want to interfere with the other case, but  
22       I just want to make sure that you're not  
23       inferring from my silence that, you know, I  
24       accept all the representations that were made

1 and about what Fairchild did.

2 THE COURT: I won't infer one way  
3 or another, but it's -- for your purposes, it's  
4 a whole different case. And you weren't here  
5 for the earlier part.

6 MR. HUI: That's right. Thank  
7 you.

8 Now, we do believe it would be  
9 most efficient to table substantive discussion  
10 of discovery schedule deadlines and limits,  
11 because a full scope of our case is not known  
12 yet. As you know, we have not answered yet. We  
13 have not asserted our counterclaims.

14 As we state in our portion of the  
15 Rule 16 statement, we said we're investigating  
16 our own claims of patent infringement against  
17 Power Integrations. And when we've completed  
18 that investigation -- and we may be filing those  
19 claims on our own. So we really only have about  
20 half of the case in front of us at this time and  
21 not the full case.

22 So they've proposed not only a  
23 very aggressive schedule, but very limited  
24 amount of discovery. I believe those proposals

1       were simply made in a vacuum.

2                   And we don't yet know the full  
3       scope of the case, but we will. So why -- I  
4       don't see why we should be going through that  
5       process now just to undo it and redo it later.

6                   THE COURT: Okay. So your  
7       preference would be that I handle the -- I guess  
8       your first preference would be that I just stay  
9       the whole case.

10                  But short of that, I should  
11       resolve the motion for stay and your motion to  
12       dismiss.

13                  MR. HUI: We believe, yeah,  
14       resolution of both of those motions would  
15       facilitate a picture of what the scope of the  
16       case is going to be. First, let me make sure  
17       very briefly about the motion for indefinite  
18       statement.

19                  Since the time that we filed that,  
20       we have been able seek sort of a limited  
21       discovery of Power Integrations that seeks some  
22       of the same information. And they have had time  
23       to respond.

24                  Now, they have not provided that

1       basic information. So one of the arguments they  
2       made on their motion of indefinite statement is,  
3       hey, we'll get that information in discovery.  
4       Now, we're in discovery and we haven't gotten  
5       that information.

6               Rather than going through and  
7       protecting the motion to compel process to  
8       essentially do the same arguments and that are  
9       already in front of the Court, you know, we  
10      think if the Court addresses the motion for  
11      indefinite statement, which is squarely before  
12      it, it should take that into account. And we  
13      have a detailed meet and confer letter and it's  
14      attached as an exhibit to our motion to stay  
15      regarding the insufficiencies of their discovery  
16      responses.

17              But I will note just one glaring  
18      example is we still don't know which claims are  
19      being asserted against which particular product.  
20      And that's a big problem for us to frame a  
21      responsive pleading. We were not clear about  
22      what the scope of their complaint was given the  
23      prior litigation, their estoppel issues or  
24      preclusion issues or even waiver issues that we



1       should be aware of. And we need a little more  
2       information to assess that.

3               On the motion to stay, we do  
4       believe that because of the advanced state of  
5       the re-examinations, the Court can really  
6       benefit from staying the case pending the  
7       outcome of those re-exams.

8               I just want to address one thing  
9       on that front. Based on what I heard today, in  
10      our motion to stay brief, and I'm not going to  
11      argue it, but there are a number of reasons why  
12      courts stay cases in similar circumstances.

13              The one factor I'll mention is to  
14      defer to particular or respectfully particular  
15      expertise of the Patent Office. And I think  
16      it's almost ironic because they had to defer to  
17      that particular expertise to get their patent  
18      granted.

19              So to the extent you need to defer  
20      to an agency decision, the initial office  
21      actions are much different than the grant of the  
22      request. Initially, at this point, the examiner  
23      has taken a look, considered the prior art that  
24      we've submitted, newly submitted prior art on

1 the merits, and then he issued the initial  
2 rejection.

3 That's exactly the same process by  
4 which they got their patents in the first place.

5 THE COURT: Okay. Thank you.

6 Mr. Scherkenbach, you want to  
7 respond briefly?

8 MR. SCHERKENBACH: I do want to  
9 address some things briefly, Your Honor. I  
10 mean, I'm glad counsel used the word ironic,  
11 because there's lots of things that are ironic  
12 about Fairchild's behavior.

13 I mean, it's all about delay.  
14 This is all about, with all due respect, this is  
15 ridiculous. This case was filed in May.

16 Okay. They have been dragging  
17 their feet on every single issue. They have  
18 produced no discovery.

19 They have blown off entirely their  
20 Rule 26 initial disclosure obligations. They  
21 have -- they say they're investigating  
22 counterclaims. We filed in May. Okay.

23 If they have counterclaims to  
24 bring, they should have brought them. That is

1 not a reason for this Court to hold up our  
2 claims against them. It's another reason to  
3 delay.

4 Why have they waited around to  
5 file a motion based on re-exam. We'll stay with  
6 the merits on this and there's not much there.

7 But why was it filed Wednesday  
8 before this -- before this conference with no  
9 meet and confer? By the way, which is one of  
10 the things you're going to hear.

11 It's very clear what's going on  
12 here. They don't want to engage -- they don't  
13 want a decision. They don't want a schedule.  
14 They just want to keep infringing.

15 And we want a schedule. We can  
16 debate the length of the schedule.

17 The differences are laid out in  
18 the proposal that you have. We can debate how  
19 much discovery we should get. We can debate  
20 whether to have a Markman hearing.

21 But the idea that because they  
22 filed a motion for more definite statement,  
23 which itself, by the way, is silly. And I have  
24 a few comments to make on that. That basically

1       ices our case.

2                       They have taken the position that  
3       because they filed that motion, they do not have  
4       to play ball. And they have not played ball.

5                       And on that motion just -- I know  
6       you don't want to hear argument on it, and I  
7       don't really want to argue it. But if you take  
8       a look at the complaints in this case versus the  
9       complaints in the Fairchild case, they're  
10      substantively the same in terms of the level of  
11      detail.

12                      THE COURT: Okay. That's more  
13      than enough argument on that.

14                      MR. SCHERKENBACH: All right.

15                      THE COURT: Mr. Hui, I see you're  
16      still on your feet. I don't want to get into  
17      back and forth on this.

18                      MR. HUI: I just wanted to say one  
19      thing. I won't come to the podium.

20                      We had a meet and confer on the  
21      motion to stay. I spoke with Michael Headley  
22      about it.

23                      THE COURT: Okay. There's no need  
24      to respond.

1 MR. HEADLEY: Okay.

2 THE COURT: I'm not going to do  
3 anything to Fairchild today. Finish out the  
4 briefing on the motion to stay, and then I will  
5 figure out what to do in that case as soon as I  
6 can.

7 MR. HUI: Thank you.

8 THE COURT: And with respect to  
9 the BCD case, I'll take the preliminary  
10 injunction motion under advisement, and we'll  
11 get a rule out to you as soon as we can.

12 I thank everyone for very helpful  
13 and informative argument and wish you all a very  
14 nice weekend.

15 (Everyone said, Thank you, Your  
16 Honor.)

17 THE CLERK: All rise.

18 (Hearing concluded at 12:42 p.m.)  
19  
20  
21  
22  
23  
24

1 State of Delaware )  
2 )  
3 New Castle County )  
4

5 CERTIFICATE OF REPORTER  
6

7 I, Heather M. Triozzi, Registered  
8 Professional Reporter, Certified Shorthand Reporter,  
9 and Notary Public, do hereby certify that the  
10 foregoing record, Pages 1 to 14 inclusive, is a true  
11 and accurate transcript of my stenographic notes  
12 taken on October 3, 2008, in the above-captioned  
13 matter.  
14

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and seal this 8th day of October, 2008, at  
17 Wilmington.  
18  
19

20 \_\_\_\_\_  
21 Heather M. Triozzi, RPR, CSR  
22 Cert. No. 184-PS  
23  
24